APPENDIX A

Opinion of the United States Court of Appeals for the Third Circuit

UNITED STATES COURT OF APPEALS

FOR THE THIRD CIRCUIT

No. 81-3100

UNITED STATES OF AMERICA,

Appellee,

vs.

UZZOLINO, JOSEPH P.,

Appellant.

(D.C. Crim. No. 79-00366-01)

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY

Argued March 30, 1982

Before: Gibbons, Sloviter and Becker, *Circuit Judges*

Appendix A

Attorneys for Appellee:

W, Hunt Dumont
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Attorney for Appellant:

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JUDGMENT ORDER

Joseph P. Uzzolino appeals from a judgment of sentence following his conviction for violation of 18 U.S.C. §§ 664 and 1954. He contends that the court erred:

(1) in failing to grant a new trial because of inconsistencies in the verdict;

(2) in admitting the testimony of Albert Personnet, an attorney for a Union Pension and Welfare Fund of which Uzzolino was an officer. We find no reason for setting aside the jury's verdict. *See United States* v. *Uzzolino,* 615 F.2d 207 (3d Cir. 1981). Assuming Uzzolino could claim the attorney client

privilege with respect to Parsonnet's testimony, the testimony was admissible under the crime-fraud exception. *Clark* v. *United States*, 289 U.S. 1 (1933).

IT IS ORDERED and ADJUDGED that the judgment of the district court will be affirmed.

By the Court,

JOHN J. GIBBONS
Circuit Judge

Attest:

Sally Mrvos, Clerk

Dated: Apr. 14, 1982

APPENDIX B

Order of the United States Court of Appeals Denying Petition for Rehearing

UNITED STATES COURT OF APPEALS

FOR THE THIRD CIRCUIT

No. 81-3100

UNITED STATES OF AMERICA,

Appellee,

vs.

UZZOLINO, JOSEPH P.,

Appellant.

(D.C. Crim. No. 79-00366-01)

SUR PETITION FOR REHEARING

Present: Seitz, *Chief Judge,* Aldisert, Adams, Gibbons, Hunter, Weis, Garth, Higginbotham, Sloviter and Becker, *Circuit Judges.*

The petition for rehearing filed by Appellant in the above entitled case having been submitted to the judges who participated in the decision of this court and to all the other available circuit judges of the circuit in regular

active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the circuit judges of the circuit in regular active service not having voted for rehearing by the court in banc, the petition for rehearing is denied.

By the Court,

John J. Gibbons
Judge

Dated: May 24, 1982

APPENDIX C

Constitutional Provision Involved

Amendment V:

"Criminal actions—Provisions concerning—Due process of law and just compensation clauses.—No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

APPENDIX D

Relevant Statute Involved

Title 18 United States Code Section 371:

"§371. Conspiracy to commit offense or defraud United States

If two or more persons conspire either to commit any offense against the United States, or defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined not more than $10,000 or imprisoned not more than five years, or both.

If, however, the offense, the commission of which is the object of the conspiracy, is a misdemeanor only, the punishment for such conspiracy shall not exceed the maximum punishment provided for such misdemeanor."

APPENDIX E

Indictment (Paragraphs 11 to 15)

Excerpt from Count I of the indictment as it was submitted to the jury,

> "11. From in and around November 1975 until approximately in and around the end of 1976 at Elizabeth in the District Court of New Jersey and elsewhere, the defendants
>
> Joseph P. Uzzolino,
> Joseph A. Uzzolino and
> Joseph Amendola
>
> did knowingly and wilfully combine, conspire, confederate and agree with each other and with others to commit offenses against the United States, that is . . . to receive funds, kickbacks, commissions, gifts, loans, money and things of value because of and with the intent to be influenced with respect to actions, decisions and other duties relating to questions and matters concerning the Welfare Fund and the Pension Fund in violation of Title 18, United States Code, Section . . . and 1954.
>
> 12. It was further part of said conspiracy that the defendants and co-conspirators agreed to use their influence to delay, obstruct and hinder the collection of in excess of $80,000 in debts already accrued and due from Tower Transportation, Inc. to the Pension Fund and the Welfare Fund in return for cash to be paid to the defendants and co-conspirators.

Appendix E

13. It was a further part of said conspiracy that $10,000 was delivered to the defendants and co-conspirators in return for their aid in delaying and obstructing and hindering the action of collection of the outstanding debt of in excess of $80,000 to the Pension Fund and Welfare Fund due to the period prior to November 7, 1975.

14. It was a further part of said conspiracy that co-conspirators would permit Towers Transportation, Inc. and Far East Truck Leasing, Inc. to employ a large number of owner-operators of trucks who were not members of Local 478 and for whom contributions to the Pension Fund and the Welfare Fund were not required, without interference in return for cash and other items of value to be paid to the defendants and co-conspirators.

15. It was a further part of said conspiracy that from approximately February through September, 1976, the defendants and co-conspirators were paid at least $1,000 per month."